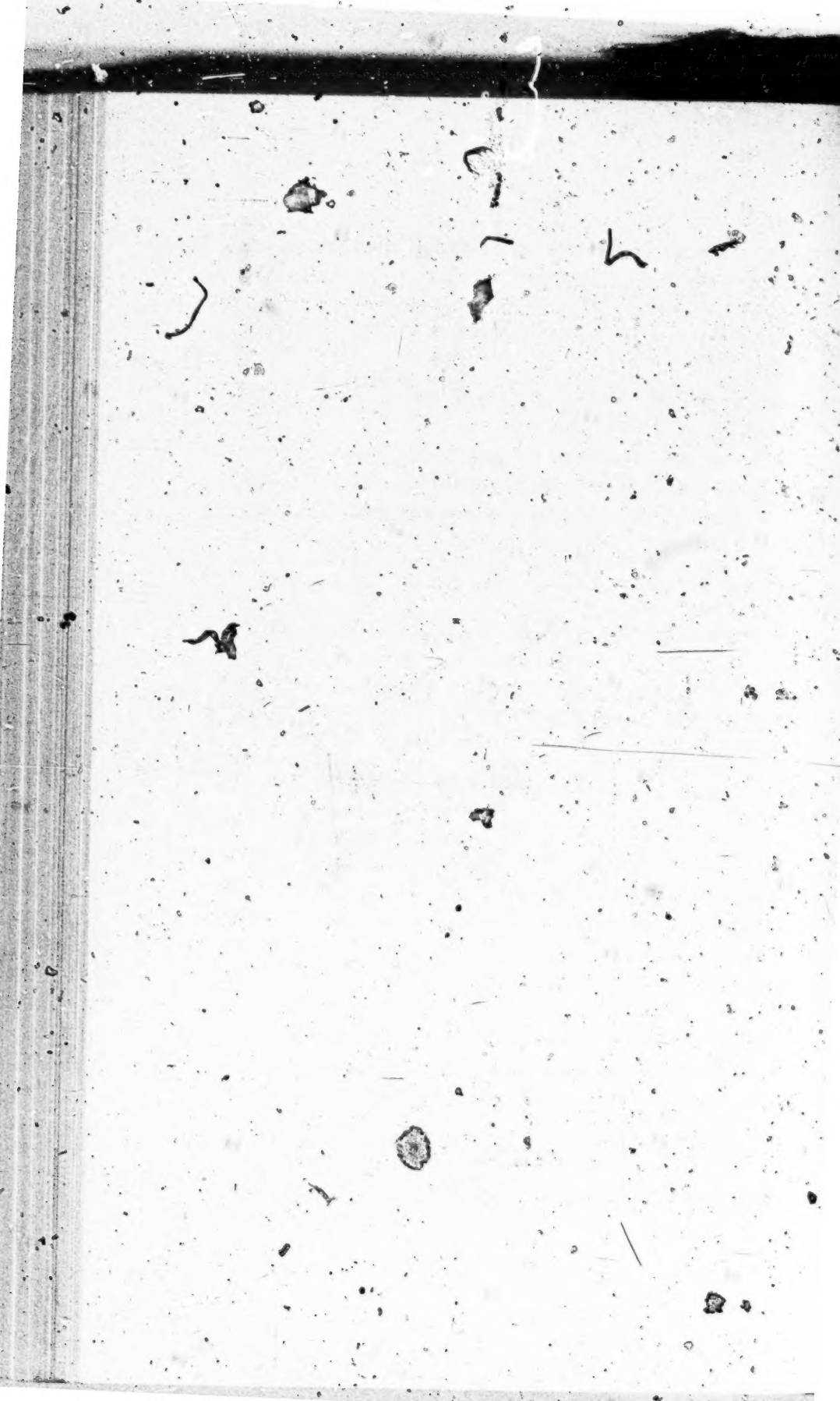

FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 25 1938
CHARLES ELMORE CROPLEY
CLERK

No. 130

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

INDIANAPOLIS BREWING COMPANY, INC., APPELLANT,

v.

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN, *et al.*, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

APPELLEE'S BRIEF

RAYMOND W. STARR,
ATTORNEY GENERAL FOR THE STATE OF MICHIGAN.

EDMUND E. SHEPHERD,
ASSISTANT ATTORNEY GENERAL
FOR THE STATE OF MICHIGAN,
OF COUNSEL, ON THE BRIEF.

GEORGE H. HEIDEMAN,
ASSISTANT ATTORNEY GENERAL
OF COUNSEL.

FRANKLIN DEKLEINE COMPANY, PRINTERS, LITHOGRAPHERS, BOOKBINDERS, LANSING

INDEX TO SUBJECT MATTER

		Page
I	REFERENCE TO OFFICIAL REPORT OF OPINION DELIVERED IN COURT BELOW	1
II	CONCISE STATEMENT IN RESPECT OF GROUNDS OF JURISDICTION (Referring to 'gentlemen's agreement' temporarily suspending regulations of Indiana and Michigan)	2, 3
III	CONCISE STATEMENT OF THE CASE	3, 5
IV	SUMMARY OF ARGUMENT	6-11
V	ARGUMENT	11-35
	POINT ONE: Section 40, Michigan Liquor Control Act, as amended (Act 281, Pub. Acts Mich. 1937 Mich. Stat. Ann., § 18.1011), does not deny to plaintiff the 'equal protection of the laws' of the State of Michigan (Const., 14th Amendment, § 1):	11-25
	[1] Plaintiff is not a person within the jurisdiction of the State of Michigan	12-17
	[2] The 'license-contract (R., p. 20),' issued by the Liquor Control Commission of the State of Michigan, did not operate to bring the plaintiff within the jurisdiction of the State, and accorded it no privilege to engage in interstate commerce	17-20
	[3] Appellant is not 'within the jurisdiction' of the State of Michigan because, as claimed, the constitutional rights of its Michigan customers are infringed	20-22

Page

[4] Since adoption of the 21st Amendment, § 2, the 'equal protection clause' of the 14th Amendment, § 1, does not operate upon the liquor laws of a State..22-26

[5] If the question is open, the enactment of § 40, as amended, *ante*, is valid exercise of State police power, under dispensation of 21st Amendment, § 2..26-28

POINT TWO: Section 40, Michigan Liquor Control Act, as amended, *ante*, imposes no unconstitutional burden on interstate commerce in liquor; and, under 21st Amendment, § 2, a State may prohibit importation of alcoholic beverages from a sister State whose laws discriminate against beer manufactured in such State; such a law would not nullify dispensation of second section of the 21st Amendment..29-34

VI CONCLUSION, AND RELIEF SOUGHT.....34, 35

TABLE OF CASES CITED

	Page
Atlantic Refining Co. v. Virginia, 82 U. S. (L. ed.) 52	8
Bacon v. Walker, 204 U. S. 311	10, 27
Barbier v. Connelly, 133 U. S. 27	10, 27
Bethlehem Motors Co. v. Flynt, 256 U. S. 421	7, 15
Blake v. McClung, 172 U. S. 239	7, 13, 19
C. B. & Q. Railroad Co. v. Drainage Commission, 200 U. S. 561	10
Cheney Brothers Co. v. Massachusetts, 246 U. S. 147	7
Conn. Gen'l Life Ins. Co. v. Johnson, 58 S. Ct. 436; 82 L. ed. 457	8
Frost v. Railroad Commission, 271 U. S. 583	8, 17, 18, 19
Gin S. Chow v. City of Santa Barbara, 217 Cal. 67	10
Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412	10, 27
Hanover Fire Ins. Co. v. Carr, 272 U. S. 713, 49 A.L.R. 713	7
Henneford v. Silas Mason Co., 300 U. S. 577	11
Indianapolis Brewing Co. v. Liquor Control Commission of Michigan, 21 Fed. Supp. 969	1
Joseph Triner Corporation v. Arundel, 11 Fed. Supp. 145	30
Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U. S. 544	8, 17, 18
L. S. & M. S. Railroad Co. v. Ohio, 173 U. S. 285	10
Lake Shore & Michigan Southern Railroad Co. v. Ohio, 173 U. S. 285	27
Louis K. Liggett Co. v. Lee, 288 U. S. 517	12

Page

Louisville v. Cumberland T. & T. Co., 224 U. S. 649 ..... 8, 17, 18

Mahoney v. Joseph Triner Corp., 304 U. S. 401 ..... 9, 11, 23, 24, 25, 31

Metropolitan Company v. Brownell, 294 U. S. 580 ..... 11, 28

Mutual Loan Co. v. Martell, 222 U. S. 225 ..... 10, 27

New York v. Roberts, 171 U. S. 658 7

Old Dearborn Distributing Co. v. Seagram Distillers Corp., 299 U. S. 183 11

Pembina Min. Co. v. Pennsylvania, 125 U. S. 181 ..... 7, 12

Philadelphia Fire Ass'n v. New York, 119 U. S. 110 7

Pierce v. the Society of Sisters of the Holy Names, 268 U. S. 510 ..... 9, 20, 22

Power Manufacturing Co. v. Saunders, 274 U. S. 490 12

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389 ..... 9, 17, 19

State v. Blake, 241 Mo. 100, 144 S. W. 1094, 28 Ann. Cas. (1913C) 1283 8

State Board of Equalization v. Young's Market Co., 299 U. S. 59 ..... 8, 9, 11, 23, 25, 26, 30

State v. Davis, 132 Ohio St. 308 9

Sully v. American National Bank, 178 U. S. 289 7

Terrace v. Thompson, 263 U. S. 197 ..... 9, 20, 21

Truax v. Corrigan, 257 U. S. 312 ..... 9, 20

Truax v. Raich, 239 U. S. 33 ..... 9, 20, 21

West Bros. v. City of Alexandria, 192 S. E. 881 10

Whitfield v. Ohio, 297 U. S. 431 10

Women's Kansas City St. Andrew's Society v. Kansas City, 58 F (2d), 593 10

Zukaitis v. Fitzgerald, 18 Fed. Supp. 1000 ..... 4, 9

CONSTITUTIONS CITED

Page

Const., United States, Article 1, § 8, Cl. 3 ('Commerce Clause') 6, 8, 17, 23, 29, 30, 33

Const., United States, 14th Amendment, § 1 ('Equal Protection Clause').....5, 6, 7, 8, 9, 10, 11, 12, 15, 23, 24

Const., United States, 21st Amendment, § 2.....
.....6, 9, 10, 11, 22, 24, 25, 26, 29, 30, 31

Const., Michigan, Article 16, § 11 (Liquor Control Amendment) 4

STATUTES CITED

Michigan Liquor Control Act (Act 8, Pub. Acts Mich. 1933, Ex. Sess. [Mich. Stat. Ann. §§ 18.971-18.1021]) 2, 4, 5

Idem., § 40, as amended by Act 281 Pub. Acts, Mich. 1937 (Stat. Ann. Pocket Supplement § 18.1011) 2, 3, 6, 7, 9, 10, 11, 23, 26, 28, 31

Indiana Liquor Law (Chap. 226, Acts 1935).....2, 32, 33

MISCELLANEOUS

11 Am. Jur., Const. Law, § 270..... 10

11 Am. Jur., Const. Law, §§ 53, 54..... 29

Fletcher, Cyc. Corp. (Perm. Ed.) § 8422..... 17

No. 130

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

INDIANAPOLIS BREWING COMPANY, INC., APPELLANT,

v.

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN, *et al.*, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

APPELLEE'S BRIEF*

I

OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW

The official report of the opinion delivered in the court below is

> *Indianapolis Brewing Co., Inc., v. Liquor Control Commission of Michigan* (Feb. 3, 1938), 21 Fed. Supp. 969.

That opinion is set forth in the printed transcript of record (36-41).

---

*Unless otherwise plainly indicated, figures in parentheses throughout this brief, e.g. (24), refer to pages of the printed transcript of record.

II

CONCISE STATEMENT OF GROUNDS OF JURISDICTION

Appellant's counsel correctly states the grounds of jurisdiction.

This Court, on October 10, 1938, noted probable jurisdiction (Rule 12).

Although at that time he raised no jurisdictional questions, the attorney general, in order that the Court may be fully informed, now directs attention to events which occurred subsequent to the district court's decision February 3, 1938, and its final decree March 5, 1938 (50).

It appears of record that, on December 14, 1937, the Liquor Control Commission of the State of Michigan, obeying the mandate of § 40 of the Michigan Liquor Control Act, as amended (Act No. 281, Pub. Acts Mich. 1937 [Mich. Stat. Ann., Pocket Supplement, § 18.1011]), made and adopted a regulation, upon which plaintiff's suit is based, designating as discriminatory the State of Indiana and nine other states of the Union (22).

It does not appear of record that on March 14, 1938, after the decree had been entered, the Alcoholic Beverage Commission of Indiana and the Liquor Control Commission of Michigan contemporaneously adopted reciprocal regulations which, in effect, suspended operation of Indiana's discriminatory laws (Chapter 226, Acts 1935, Chapter 197, Acts 1937, Burns Revised States, Supplement, §§ 12,801, 12,901), and Michigan's anti-discriminatory statute (§ 40, *supra*).

The Michigan regulation of March 14, 1938, reads as follows:

> Pursuant to Section 40 of the Michigan Liquor Control Act on December 14, 1937, Indiana among other states was designated as a state, the laws, rules, regulations of which discriminate against Michigan beer.
>
> The Alcoholic Beverage Commission of Indiana having this day adopted certain regulations, it is therefore resolved that the effective date of the order of the Liquor Control Commission of the State of Michigan entered of record December 14, 1937, as against the State of Indiana be, and the same is now changed from March 14, 1938, and is now extended to March 30, 1939.

Since this understanding probably expends its legal force as a 'gentlemen's agreement' pending outcome of litigation, or as a truce made in contemplation of some hoped-for legislative enactments which might possibly end the controversy, it has not, we think, rendered moot the questions presented here.

III

CONCISE STATEMENT OF THE CASE

Appellant's counsel, in relating the facts, have been eminently fair, and we make only such statement of the case as may be deemed necessary in correcting a few slight inaccuracies or omissions (Rule 27).

(1) It is said that appellant was 'a manufacturer of beer duly licensed to import into and sell in the State of

Michigan (Brief, p. 2),' and that 'appellant alleged and exhibited its license to do business within the State of Michigan (Brief, p. 5).'

We observe that the license referred to (20) was not a grant or permit to enter the State of Michigan for the purpose of transacting intrastate business as a foreign corporation; that it was issued by the Liquor Control Commission of the State of Michigan April 29, 1937 (prior to amendment of § 40 of the Michigan Liquor Control Act [Act No. 281, Pub. Acts Mich. 1937, effective July 21, 1937]), pursuant to a valid regulation which required that out-state breweries be licensed with a 'Seller's Contract,' adopted in exercise of certain broad, general administrative powers conferred on the Commission by the State Constitution,[1] and by the legislature.[2]

This particular regulation has been sustained by the District Court of the United States for the Western District of Michigan. *Zukaitis v. Fitzgerald, Governor* (Dec. 15, 1936), 18 Fed. Supp. 1000, 1005.

The plaintiff has never entered the State of Michigan for the purpose of conducting intrastate business as a foreign corporation (4, 5, 24); it has not been licensed by that state as a foreign corporation; it has no agents

---

[1]Section 11, Article 16, Michigan State Constitution:

"*Regulation of alcoholic beverage traffic.*—The legislature may by law establish a liquor control commission, who, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof: . . . . . "

[2]Paragraph 2, § 1, Michigan Liquor Control Act:

"Except as by this act otherwise provided, the commission shall have the sole right, power and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the state of Michigan, including the manufacture, importation, possession, transportation and sale thereof."

in that commonwealth; its sales are consummated in the course of interstate commerce (4); and it invoked the jurisdiction of the district court on the ground of diversity of citizenship (5).

(2) On page 11 of appellant's brief, counsel sets forth the grounds on which appellee moved to dismiss plaintiff's bill of complaint, as supplemented and amended (33-36).

To this, we would add the following:

5. That said Section 40 of the Michigan Liquor Control Act does not violate the Fourteenth Amendment to the Constitution of the United States, for the following reasons: . . . .

(b) The plaintiff corporation is not a person within the jurisdiction of the State of Michigan which is denied the equal protection of the laws for the reason that the bill of complaint shows that said plaintiff corporation is organized and existing under the laws of the State of Indiana; said bill of complaint fails to allege facts which would amount to 'doing business' by said corporation within the State of Michigan or which would subject it to the service of process therein. Said bill of complaint further fails to show that it has complied with the requirements of the statute of the State of Michigan which are prerequisite to its right to do business therein as a foreign corporation or which would subject it to or bring it within the jurisdiction of the State of Michigan (35).

IV

SUMMARY OF ARGUMENT

The questions for decision involve the constitutional validity of certain 'retaliatory provisions,' so-called, of § 40 of the Michigan Liquor Control Act, as amended (Act No. 281, Pub. Acts Mich. 1937 [Mich. Stat. Ann., Pocket Supplement, § 18.1011]), tested by the 21st Amendment, the 'equal protection clause' of the 14th Amendment, § 1, and the 'commerce clause' of the Constitution of the United States (Article 1, § 8 (3)).

That portion of § 40, *supra*, which is material to an understanding of this cause, reads:

> The commission shall forthwith adopt a regulation designating the states, the laws, or the rules or regulations of which are found to require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; or which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; or which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in this state, unless the one from whom purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein; or which impose any higher taxes or inspection fees upon beer manufactured in this state when transporting into or sold therein, than is imposed upon beer manufactured and sold within said state, the regulation adopted shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state therein designated, said regulation to become effective ninety days after its

adoption. Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the commission has acted illegally or in excess of authority in making its finding with respect to any state.

Our contentions, tersely stated, are:

Point One: Section 40, Michigan Liquor Control Act, as amended (*supra*), does not deny to plaintiff the 'equal protection of the laws' of the State of Michigan.

[1] Plaintiff, as a domestic corporation which has never made legal entry into the State of Michigan for the purpose of conducting intrastate business as a foreign corporation, is not a person 'within the jurisdiction' of the State of Michigan, within the meaning of the language of the 14th Amendment, § 1, Constitution of the United States.

Philadelphia Fire Ass'n v. New York (1886), 119 U. S. 110;

Pembina Min. Co. v. Pennsylvania (1888), 125 U. S. 181;

New York v. Roberts (1898), 171 U. S. 658;

Blake v. McClung (1898), 172 U. S. 239;

Sully v. American Nat'l Bank (1899), 178 U. S. 289;

Cheney Brothers Co. v. Massachusetts (1818). 246 U. S. 147;

Bethlehem Motors Co. v. Flynt (1921), 256 U. S. 421;

Hanover Fire Ins. Co. v. Carr (1926), 272 U. S. 713, 49 A. L. R. 713;

Atlantic Refining Co. v. Virginia (1937), 82 U. S. (L. ed.) 52;

Conn. Gen'l Life Ins. Co. v. Johnson (1938), 58 S. Ct. 436; 82 L. ed. 457;

State v. Blake (1912), 241 Mo. 100, 144 S. W. 1094, 28 Ann. Cas. (1913C) 1283.

[2] Plaintiff obtained no right or authority to engage in intrastate business as a foreign corporation within the State of Michigan, by virtue of the license contract issued to it by the Liquor Control Commission (20), and the mere fact that it is engaged in interstate commerce does not entitle it to the 'equal protection of the laws' of Michigan. 14th Amendment, § 1.

Its rights, unless foreclosed upon consideration of the decision in *State Board of Equalization v. Young's Market Co.* (1936), 299 U. S. 59, depend entirely upon applicability of the 'commerce clause' (Const. Article 1, § 8 [3]).

The following cases, upon which appellant's counsel rely (p. 19, Brief), may be distinguished, generally, on the ground that the corporation involved in litigation had been licensed to do intrastate business within a state other than that of its domicile, or that it had entered the foreign state for the purpose of instituting replevin actions to recover possession of its personal property:

Louisville v. Cumberland T. & T. Co. (1912), 224 U. S. 649;

Kentucky Finance Corp. v. Paramount Auto Exch. Corp. (1923), 262 U. S. 544;

Frost v. Railroad Commission (1926), 271 U. S. 583;

Quaker City Cab Co. v. Pennsylvania (1928), 277 U. S. 389.

[3] Appellant is not entitled to assert successfully that its (interstate) business being destroyed through a claimed infringement of the constitutional rights of its customers (the licensed wholesalers and retailers of Michigan), it is entitled to 'equal protection of the laws' of Michigan.

The decisions cited by appellant's counsel (p. 18, Brief) do not sustain their position:

Truax v. Raich (1915), 239 U. S. 33;

Truax v. Corrigan (1921), 257 U. S. 312;

Terrace v. Thompson (1923), 263 U. S. 197;

Pierce v. The Society of Sisters of the Holy Names (1925), 268 U. S. 510.

[4] Since adoption of the 21st Amendment, § 2 (Const., United States), the 'equal protection clause' of the 14th Amendment, § 1, does not operate upon the liquor laws of a state.

This phase of the question is controlled by:

State Board of Equalization v. Young's Market Co. (1936), 299 U. S. 59;

and

Mahoney v. Joseph Triner Corp. (May 23, 1938), 304 U. S. 401.

See, also,

Zukaitis v. Fitzgerald, Governor (1936), 18 Fed. Supp. 1000;

State v. Davis (1937), 132 Ohio St. 308.

[5] Should it be held that plaintiff corporation is in position to invoke the equal protection clause of the 14th Amendment, § 1, and that the question is open, then we respectfully submit:

First: That the enactment of § 40, *ante*, is a valid exercise of state police power, which has expanded to promote fair competitive conditions, and the equalization of economic advantages enjoyed by other states in respect of their liquor traffic, under dispensation of the 21st Amendment, § 2.

Barbier v. Connelly (1885), 133 U. S. 27;

L. S. & M. S. Railroad Co. v. Ohio (1889), 173 U. S. 285;

C. B. & Q. Railroad Co. v. Drainage Commission (1906), 200 U. S. 561;

Bacon v. Walker (1907), 204 U. S. 311;

Mutual Loan Co. v. Martell (1911), 222 U. S. 225;

Whitfield v. Ohio (1936), 297 U. S. 431;

Great Atlantic & Pacific Tea Co. v. Grosjean (1937), 301 U. S. 412.

See, also,

Women's Kansas City St. Andrew's Society v. Kansas City (1932), 58 F (2d) 593;

Gin S. Chow v. City of Santa Barbara (1933), 217 Cal. 67;

West Bros. v. City of Alexandria (Va.—1937), 192 S. E. 881;

11 Am. Jr., Constitutional Law, § 270, and cases cited, footnote 8.

Second: Applying to legislation in question the rule of reason, it would appear that the classification employed in § 40, *ante*, is not arbitrary.

Metropolitan Company v. Brownell (1935), 294 U. S. 580;

Old Dearborn Distributing Co. v. Seagram-Distillers Corp. (1936), 299 U. S. 183;

Henneford v. Silas Mason Co. (1937), 300 U. S. 577.

Point Two: Section 40 of the Michigan Liquor Control Act, as amended, *ante*, imposes no unconstitutional burden on interstate commerce in liquor (Const., Article 1, § 83).

Under the 21st Amendment, § 2, a state may prohibit importation of alcoholic beverages from a sister state whose laws, rules, and regulations discriminate against such state; and such a law would not nullify the dispensation of the 21st Amendment, § 2.

This question, we submit, is controlled by the decisions of this Court in *State Board of Equalization v. Young's Market Co.* (1936), 299 U. S. 59; and *Mahoney v. Joseph Triner Corp.* (1938), 304 U. S. 401.

V.

ARGUMENT

POINT ONE

Section 40, Michigan Liquor Control Act, as amended, ante, does not deny to plaintiff the equal protection of the laws of the State of Michigan (Const., 14th Amendment, § 1).

[1] Plaintiff is not a person 'within the jurisdiction of the State of Michigan.'

The facts stated and the authorities cited in our 'Summary of Argument,' require little elaboration.

Although the constitutional provision forbidding a state to deny to any person 'equal protection of the laws' extends to corporate as well as natural persons (Const., 14th Amendment),[3] and a corporation is a 'person' within the equal protection clause of the 14th Amendment,[4] such benefits may not be claimed until the corporation has lawfully submitted itself to the jurisdiction of the state.

It may be helpful to consider a few of the many decisions cited in the summary (*ante*, p. 7), without extending this brief unduly.

In *Pembina Mining Co. v. Pennsylvania* (1887), 125 U. S. 181, 188, it appeared that the plaintiff mining company incorporated under the laws of Colorado, with its principal office in Alpine, Colorado, and a branch office in the city of Philadelphia, 'for the use of its officers, stockholders, agents, and employes.' The auditor general and treasurer of Pennsylvania assessed a tax against the corporation for 'office license,' under authority of an act of the legislature of that commonwealth. The state courts affirmed the validity of the assessment, and from final order of the supreme court appeal was had to this Court. It was claimed that the act in question was in conflict with the equal protection of the 14th Amendment, § 1.

---

[3] *Power Manufacturing Co. v. Saunders* (1927), 274 U. S. 490.
[4] *Louis K. Liggett Co. v. Lee* (1933), 288 U. S. 517.

The Court say:

> The application of the Fourteenth Amendment of the Constitution to the statute imposing the license tax in question is not more apparent than the application of the clause of the Constitution to the rights of citizens of one State to the privileges and immunities of citizens in other States. The inhibition of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of person there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name, and have a succession of members without dissolution. As said by Chief Justice Marshall, 'The great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men.' *Providence Bank v. Billings*, 4 Pet. 514, 562. The equal protection of the laws which these bodies may claim is only such as is accorded to similar associations within the jurisdiction of the State. The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax it can claim the same protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the State, and the constitutional amendment requires nothing more.

The clearest statement of this doctrine, we think, is found in the language of Mr. Justice Harlan, in *Blake v. McClung* (1898), 172 U. S. 239, 260, where a foreign corporation had presented its claim in the State of Tennes-

see against a British corporation in process of liquidation. It claimed that because of certain priorities granted citizens of that state under its laws, it had been denied equal protection of the laws.

Mr. Justice Harlan, speaking for the Court:

> It is equally clear that the Virginia corporation cannot rely upon the clause declaring that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' That prohibition manifestly relates only to the denial by the State of equal protection to persons 'within its jurisdiction.' Observe, that the prohibition against the deprivation of property without due process of law is not qualified by the words 'within its jurisdiction,' while those words are found in the succeeding clause relating to the equal protection of the laws. The court cannot assume that those words were inserted without any object, nor is it at liberty to eliminate them from the Constitution and to interpret the clause in question as if they were not to be found in that instrument. Without attempting to state what is the full import of the words, 'within its jurisdiction,' it is safe to say that a corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that State. Certainly, when the statute in question was enacted the Virignia corporation was not within the jurisdiction of Tennessee. So far as the record discloses, its claim against the Embreeville Company was on account of coke sold and shipped from Virginia to the latter corporation at its place of business in Tennessee. It does not appear to have been doing business in Tennessee under the statute here involved, or under any statute that would bring it directly under the jurisdiction of the courts of Tennesee by service of process on its officers

> or agents. Nor do we think it came within the jurisdiction of Tennessee, within the meaning of the Amendment, simply by presenting its claim in the state court and thereby becoming a party to this cause. Under any other interpretation the Fourteenth Amendment would be given a scope not contemplated by its framers or by the People, nor justified by its language.

Holding that a North Carolina statute, providing that every manufacturer of automobiles engaged in the business of selling them in the state must pay a license tax of $500, but further providing certain exemptions, was discriminatory, contrary to the 14th Amendment, this Court assumed that the corporation which invoked the 'equal protection clause' were subject to the jurisdiction of that State. *Bethlehem Motors Corporation v. Flynt* (1921), 256 U. S. 421, 424.

The Court said on that occasion:

> "This court has decided too often to need citation of the cases that corporations doing business in a State and having an agent there are within the jurisdiction of the State for the purpose of suit against them, and we may assume that the principle is applicable here and that the Pennsylvania corporation, the Indiana corporation and the Delaware corporation are within the jurisdiction of the State and subject to its laws, equally with the corporations of the State."

It must be clear, under the authorities cited, that the Indianapolis Brewing Company, Inc., is not in a favorable position to claim the 'equal protection of the laws' of the State of Michigan. By its own pleadings is it condemned.

The bill of complaint recites that plaintiff is an Indiana corporation, 'and is not a citizen or resident of the State of Michigan, the Eastern District of Michigan, or the Southern Division of said District (1).'

Its sales in Michigan 'have been consummated on written, telegraphic, or telephonic orders from plaintiff's customers in said State to plaintiff in the State of Indiana. Such orders have been in all cases accepted by plaintiff in the State of Indiana, and call for delivery either under direction of plaintiff or its customers at said customer's place of business, or other designated destination, in the State of Michigan (4).'

The suit and matter in controversy 'is wholly between citizens of different states and can be fully determined as between them (5).'

It appears from such averments of plaintiff's bill, as amended and supplemented, from statements in counsel's proposed findings of fact (43), and from supporting affidavits on file in this cause (56-62), that this Indiana corporation has no property, real or personal, within the State of Michigan, which requires 'protection,' or upon which process might be levied; that it pays no local taxes assessable upon its property within the State, and contributes nothing to Michigan's common wealth; that it has assumed no burdens or obligations resting upon a Michigan citizen or resident, natural or corporate; that it transacts no intrastate business within Michigan's borders; that it has no office or place or business, and employs no agents or servants in that commonwealth, for the purpose of furthering its commercial interests, intrastate or interstate; and that it has within the State of Michigan no officer authorized to accept service of judicial process.

It may not be said, we respectfully submit, that plaintiff is a person 'within (the) jurisdiction' of the State of Michigan.

[2] The 'license-contract (20) issued by the Liquor Control Commission of the State of Michigan, did not operate to bring the plaintiff within the jurisdiction of the State, and accorded it no privilege to engage in intrastate commerce.

On page 18 of appellant's brief, appears the following assertion:

"Since the appellant is duly licensed to engage in interstate commerce in alcoholic liquors under the laws of Michigan, it is, although a corporation of the State of Indiana, entitled to claim the equal protection of the laws while engaged in interstate commerce."

Citing:

Louisville v. Cumberland Telephone Co. (1912), 224 U. S. 649;

Kentucky Finance Corp. v. Paramount Auto Exch. (1923), 262 U. S. 544;

Frost Trucking Co. v. Railroad Commission (1926), 271 U. S. 583, 593, 594;

Quaker City Cab Co. v. Pennsylvania (1928), 277 U. S. 389, 400;

Fletcher (Cyc. Corp.) (Perm. ed) § 8422.

The statement in Fletcher's Cyclopedia, § 8422, however, is in respect of unlawful interference with commerce (Const., Article 1, § 8 [3]), and does not treat of the rights of a foreign corporation under the equal protection clause of the 14th Amendment.

The case of *Louisville v. Cumberland Telephone Co.* (1912), 224 U. S. 649, involved a franchise granted by the State to a telephone company, and difficulties which arose between the corporation and the city of Louisville. We have read the opinion carefully, but find no reference to the equal protection clause of the 14th Amendment.

In *Kentucky Finance Corporation v. Paramount Exchange* (1923), 262 U. S. 544, it is held that 'a corporation which goes into a State other than that of its creation for the lawful purpose of possessing itself, by a permissible action in her courts, of specific personal property unlawfully taken out of its possession elsewhere and fraudulently carried into that State, is a person within the jurisdiction of that State, within the meaning of the 14h Amendment, for all the purposes of that undertaking, and entitled to the equal protection of the laws.

That, surely, is not the situation in the case at bar, for plaintiff has never placed itself within the jurisdiction of the State of Michigan, nor has it submitted itself to the jurisdiction of a state court for the purpose of recovering possession of tangible personal property fraudulently removed to Michigan.

Although, in *Frost Trucking Company v. Railroad Commission* (1926), 271 U. S. 583, plaintiff claimed that it had been denied the equal protection of the laws in violation of the 14th Amendment (p. 585), this Court did not have occasion to reach that question, but held that the statute of California called in question there was constitutionally invalid under the due process clause.[5]

[5]Under the Auto Stage and Truck Transportation Act of California, as amended in 1919, and as construed and applied by the state supreme court in this case, private carriers by automobile for hire cannot operate over the state highways between fixed termini without having first

As observed in *Blake v. McClung* (1898), 172 U. S. 239, the due process clause of the 14th Amendment is not limited by the words 'within its jurisdiction,' as is the equal protection clause of the same section.

Moreover, it appears from the printed transcript of record in the *Frost Case, supra,* page 1, that the Frost & Frost Trucking Company, petitioner, was a co-partnership doing business under that name and style; and that it was engaged in intrastate commerce or transportation.

The remarks of this Court in respect of the rights of foreign corporations (pp. 594-598) were *obiter dictum.* And the cases cited in the opinion go no further than to hold that a state is without power to impose upon a foreign corporation doing business within its borders the condition that it surrender any Federal constitutional right. In the majority of these decisions, the commerce clause had been violated and the equal protection clause was not involved.

This Court, in *Quaker City Cab Co. v. Pennsylvania* (1928), 277 U. S. 389, plaintiff in error was a New Jersey corporation authorized to do business in Pennsylvania as a foreign corporation, and was 'within the jurisdiction' of the Commonwealth. There was no question of interstate commerce. Mr. Justice Butler said (p. 400):

> "The equal protection clause extends to foreign corporations within the jurisdiction of the State and safeguards to them protection of laws applied equal-

secured from the Railroad Commission a certificate of public convenience and necessity, and therein they not merely become subject to regulations appropriate to private carriers but submit themselves to the condition of becoming common carriers and of being regulated as such by the Commission. *Held* violative of the due process clause of the Fourteenth Amendment.

ly to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. *Kentucky Finance Corp. v. Paramount Exch.*, 262 U. S. 544, 550 . . . . The right to withhold from a foreign corporation permission to do local business therein does not enable the State to require such a corporation to surrender the protection of the Federal Constitution. . . ."

[3] Appellant is not 'within the jurisdiction' of the State of Michigan because, as claimed, the constitutional rights of its customers are infringed.

The cases cited, on page 18 of appellant's brief, are readily distinguished:

Truax v. Raich (1915), 239 U. S. 33;

Truax v. Corrigan (1921), 257 U. S. 312;

Terrace v. Thompson (1923), 263 U. S. 197;

Pierce v. The Society of Sisters of the Holy Names (1925), 268 U. S. 510.

In *Truax v. Raich, supra,* plaintiff, an inhabitant of Arizona, brought action in the district court of that State, to restrain enforcement of an act relative to the employment of aliens, and, on appeal to this court, it was held:

"A State may not, in order to protect citizens of the United States, in their employment against non-citizens of the United States in that State, require that employers only employ a specified percentage of alien employes—such a statute denies to alien inhabitants the equal protection of the law. . . ."

It was also held that although a statute may only render an employer liable to prosecution, if it operates directly upon the employment of the employe, the latter is affected directly, has no adequate remedy at law, and if the statute is unconstitutional, is entitled to equitable relief.

This, we think, does not mean that an out-state corporaiton may claim equal protection of the laws of Michigan in behalf of its interstate customers.

No support for appellant's position is found in *Truax v. Corrigan, supra* (1921), 257 U. S. 312, for there the plaintiffs maintained and operated a restaurant (as copartners), while the defendants were cooks and waiters formerly in the employ of plaintiffs, together with the labor union and the trades assembly of which they were members. All parties were residents of the State of Arizona (pp. 320, 321). This Court, in that case, held unconstitutional a state law, regulating injunctions in labor controversies, because it discriminated between the classes affected.

In *Terrace v. Thompson* (1923), *supra*, 263 U. S. 197, suit was brought to enjoin the attorney general of Washington from enforcing the Anti-Alien Land Law of that State, c. 50, Laws, 1921, on the ground that it was in conflict with the due process clause and the equal protection clause of the 14th Amendment; with the treaty between the United States and Japan, and with certain provisions of the constitution of the State.

The parties were residents of the State of Washington.

This Court dismissed the bill, and held the statute valid as against the objections raised.

Pierce v. Society of Sisters, etc. (1925), 268 U. S. 510, involved challenge to Oregon's Compulsory Education Act, which required every parent, guardian or other person having control of a child between the ages of eight and sixteen years to send him to the public school.

Plaintiff, an Oregon corporation devoting its property and effort to secular and religious education and care of children in that State, filed its bill for injunction, in the district court of the United States for the District of Oregon, against the Governor and others.

Declaring the Act unconstitutional, because offensive to the 14th Amendment, this Court also held that where corporations owning and conducting schools are threatened with destruction of their business and property through the improper and unconstitutional compulsion exercised by this statute upon parents and guardians, their interest is direct and immediate and entitles them to protection by injunction.

While it is true that in the case at bar the statute (§40, *ante*) operates directly upon the domestic licensees of the Liquor Control Commission, and by indirection upon the plaintiff as an out-state corporation, while engaged in interstate commerce, the principle announced in the *Pierce Case, supra,* has no application here.

And, we respectfully submit, the decisions cited *ante* do not militate against, or in any degree modify the general rule that a corporation doing an exclusive interstate business may not have equal protection of the laws of any state unless and until it comes within its jurisdiction.

[4] Since adoption of the 21st Amendment, § 2, of the Federal Constitution, the 'equal protection clause' of the

14th Amendment, § 1, does not operate upon the liquor laws of a State.

As pointed out in our summary of argument, this phase of the question, we think, is controlled entirely by two recent decisions of this Court:

State Board of Equalization v. Young's Market Co. (1936), 299 U. S. 59; and
Mahoney v. Joseph Triner Corp. (1938), 304 U. S. 401.

In *Young's Market Case, supra,* plaintiffs were domestic corporations and individual citizens of California, engaged in selling at wholesale at one or more places within the State beer imported from Missouri or Wisconsin.

They instituted suit in the federal court for southern California, to challenge the validity of a statute of that state, and of the regulations thereunder, which imposed a license-fee of $500 for the privilege of importing beer to any place within its borders, because, it was said, such a statute would violate the commerce clause (Const., Article 1, § 8, cl. 3) and the equal protection clause of the 14th Amendment. We shall presently consider the latter claim, and this Court's decision thereon.

Speaking for the Court, Mr. Justice Brandeis said:

> "Second. The claim that the statutory provisions and the regulations are void under the equal protection clause may be disposed of. A classification recognized by the Twenty-First Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the state comes from two sources.

> The brewer of the domestic article may be required to pay a license fee for the privilege of manufacturing it; and under the California statute is obliged to pay $750 a year. Compare *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 30 S. Ct. 578, 54 L. Ed. 883. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license fee of $500. Compare *Kidd v. Alabama*, 188 U. S. 730, 732, 23 S. Ct. 401, 47 L. Ed. 669."

This particular question, involving the possible relationship of the equal protection clause of the 14th Amendment, § 1, to the 21st Amendment, § 2, was raised again in *Mahoney v. Joseph Triner Corporation*, where the point was perhaps more closely pressed in briefs filed by the plaintiffs, and in a brief presented by the attorney general of the State of Indiana, as *amicus curiae*.

The statute challenged there was an enactment of the legislature of Minnesota, which provided:

> "No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States."

The lower court held the measure unconstitutional. 11 Fed. Supp. 145, 20 Fed. Supp. 1019.

This Court, on appeal, reversed the judgment, holding that since the adoption of the 21st Amendment prohibiting the importation of intoxicating liquor into any state in violation of its laws, the equal protection clause of the 14th Amendment does not operate.

It is important to observe, before considering the opinion of this Court and the doctrine which it established, that the briefs in the *Triner Case* ably and comprehensively presented the points now stressed by counsel for appellant.

Thus, in the brief of appellee (p. 4), it was pointed out that for years prior to the 18th Amendment, the dry states were powerless fully to protect their publicly declared policy of prohibition, and that to obviate this difficulty the Congress enacted, in succession, the Wilson Act (1890, 26 Stat. 313), and the Webb-Kenyon Act (1913).

It was urged, as do counsel here, that the 21st Amendment, § 2, must be construed in the light of the Wilson Act and the Webb-Kenyon Act, and that it was the intention of the Congress to 'freeze into' the Constitution (21st Amendment) the provisions of such enactments. And as extrinsic aid to construction resort was had to congressional debates (pp. 4, 5, 6). Compare, pp. 21, 22, 23, 24, appellant's brief in the case at bar.

That point was stressed by the attorney general of Indiana, who urged that 'a merely literal interpretation' of the 21st Amendment, § 2, was inappropriate, and cited numerous decisions of this Court,[6] all of which now reappear in appellant's brief (pp. 16, 41-44, and 50) to support the same position.

This Court, however, in the *Triner Case*, ante, rejected such extrinsic aids,[7] held that the language of the second

---

[6]Indiana's Brief, Triner Case, No. 761, October Term 1937.

[7]For a comprehensive treatment of the history of the Wilson Act, the Webb-Kenyon Act, the Reed Amendment, and the 21st Amendment to the Constitution, see Brief of the attorney general of California in the *Young's Market Co. Case.*

section of the 21st Amendment should be interpreted from its own clear and unmistakable terms, and that it was not, therefore, open to construction.

Adhering to the principles established in the *Young's Market Co. Case*, and repeating the language of that opinion, Mr. Justice Brandeis said:

> " 'The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment. *As we think the language of the Amendment is clear, we do not discuss these matters.*' " [Italics supplied]

And, speaking of the scope of § 2, Twenty-first Amendment, this Court say:

> ". . . .We are asked to limit the power conferred by the Amendment so that only those importations may be forbidden which, in the opinion of the Court, violate a reasonable regulation of the liquor traffic. To do so would, as stated in the *Young's Market Co. Case, p. 62,* 'involve not a construction of the Amendment, but a rewriting of it.' "

[5] If the question is open, and this we doubt, then the enactment of § 40, as amended, ante, is a valid exercise of state police power, to promote fair competitive conditions, and the equalization of economic advantages enjoyed by other states under dispensation of the 21st Amendment, § 2.

May a State, in exercise of sovereign powers restored to it by the 21st Amendment, and without violating the equal protection clause of the 14th Amendment, enact a

statute for the purpose of protecting its domestic beer industry; or, in the exercise of such power, is a State restricted to the protection of the health, safety, and morals of its people?

The historic and traditional definition of the term 'police power,' as one to be exercised only for the protection of the public health, safety, and morals, has been extended to include enhancement of the public convenience: *Lake Shore & Michigan Southern Railroad Co. v. Ohio* (1889), 173 U. S. 285;

—— to preservation of the general prosperity: *Bacon v. Walker* (1907), 204 U. S. 311;

—— and to preservation of the general welfare: *Mutual Loan Co. v. Martell* (1911), 222 U. S. 225.

In the early case of *Barbier v. Connelly* (1885), 133 U. S. 27, this Court said:

> ". . . But neither the Amendment (Const., 14th Amend.), broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes called its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate *so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. . .* " [Italics supplied]

Probably the most recent expression of this thought will be found in Mr. Justice Cardozo's opinion in the 'Louisiana Chain Store Tax Case,' *Great Atlantic & Pacific Tea Co. v. Grosjean* (1937), 301 U. S. 412, where it was held that taxation may be the implement of exercise of a State's police power; and hence a proper and rea-

sonable discrimination between classes is lawful 'to promote fair competitive conditions and to equalize economic advantages.'

See, also, cases cited in our summary (*ante*, p. 10).

Applying to the legislation in question the rule of reason, it would appear that the classification employed is not arbitrary.

> "A statutory discrimination will not be set aside as denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it."
> —*Metropolitan Co. v. Brownell* (1935), 294 U. S. 580.

Extension of the argument would add little to solution of the problem, though we shall have occasion, under 'POINT TWO,' *infra*, to revert to the subject for the purpose of meeting certain objections raised by appellant's counsel; a challenge based upon the claim that enactment of § 40, *ante*, nullifies the second section of the 21st Amendment.

POINT TWO

Section 40 of the Michigan Liquor Control Act, as amended, ante, p. 6, under dispensation of the 21st Amendment, imposes no unconstitutional burden upon interstate commerce in intoxicating liquors.

As stated in summary of argument (*ante*, p. 11), it is our contention that a State, under dispensation of the 21st Amendment, may prohibit importation of alcoholic beverages, from a sister State whose laws, rules, and regulations discriminate against said State.

[1] Counsel for appellant conscientiously conceive this to be a complex question, but, as we view it, upon consideration of plain and unambiguous constitutional language (Const., Article 1, § 8; 21st Amendment, § 2), the answer is simple.

Well recognized 'Horn Book' rules of interpretation and construction are to be applied to constitutional amendments and, while an amended Constitution must be read as a whole, as if every part of it had been adopted at the same time and as one law, in accordance with the general rule that harmony must prevail, 'amendments are usually adopted for the express purpose of making changes in the existing system.' 11 Am. Jur., Constitutional Law, §§ 53, 54, and cases cited.

Article 1 of the Federal Constitution grants certain legislative powers and vests them in the Congress.

Article 1, § 8, provides that:

> Section 8. The Congress shall have power. . . . (Cl. 3) to regulate commerce with foreign nations,

and among the several States, and with the Indian Tribes.

The 21st Amendment reads:

> Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

This later provision of the Constitution limits the legislative power of the Congress, over the liquor traffic, and restores to the several States of the Union their sovereignty within this narrow field of commerce.

In the *Young's Market Co. Case,* 299 U. S. 59, the question was laid at rest when this Court said:

> The amendment which 'prohibited' the 'transportation or importation' of intoxicating liquors into any State 'in violation of the laws thereof,' abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the amendment as saying in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the amendment, but a rewriting of it.

The question was raised by plaintiffs in *Joseph Triner Corporation v. Arundel* (District Court, Minnesota), 11 Fed. Supp. 145, and, on preliminary hearing, the court

held that the 21st Amendment was not intended to except intoxicating liquors from provisions of the Commerce Clause. On final hearing, the court considered only questions involving the equal protection clause of the 14th Amendment.

On appeal to this Court, counsel for plaintiffs conceded that 'the Twenty-first Amendment relieved the States from the restrictions and limitations imposed upon them by the Commerce Clause.' *Mahoney v. Joseph Triner Corporation* (1938), 304 U. S. 401.

We respectfully submit that the question is settled.

[2] The question is settled unless there be some merit to appellant's contention, vigorously pressed, that the 'retaliatory type' of legislation, said to be exemplified in the Michigan statute (§ 40, *ante*), is a serious threat to the integrity of the Twenty-first Amendment itself.[7]

Counsel contends that the Michigan Act 'retaliates' against any State making use of the dispensation of the 21st Amendment, and seeks by economic reprisal to coerce its sister States from recourse to the Amendment; that it strikes directly at the integrity of the 21st Amendment itself, and accomplishes its nullification.

In short, it seems to be argued that, once the State of Indiana has taken advantage of Section 2 of the 21st Amendment, and in exercise of its constitutional rights thereunder has passed a law, or adopted a rule or regulation which in effect discriminates against the liquor commerce of the State of Michigan, its right to such dis-

[7]This point was urged in the brief of the Attorney General of Indiana, in the *Joseph Triner Co. Case.*

pensation becomes exclusive, and the sister State whose liquor commerce is thereby injured, has no remedy.

We are unable to perceive justice or equity in such a rule or doctrine, and counsel has cited no authority to sustain it.

Section 9 of the Indiana Act in substance requires a wholesaler of beer to secure a separate license for which a fee of one thousand dollars ($1,000) must be paid, and a surety bond in the penal sum of two thousand dollars ($2,000) must be posted, but this license does not authorize importation of beer. But the Indiana law further provides that any person holding a permit to wholesale alcoholic malt beverages under the Act may secure an additional permit to be known as a 'Port of Entry Permit,' which, when granted, authorizes said wholesaler to import into the State of Indiana alcoholic malt beverages which have been manufactured outside the State of Indiana, and transport, sell and deliver such imported alcoholic malt beverages within any county in the State of Indiana.

For this additional 'Port of Entry Permit,' a separate, and additional, license fee, in the sum of fifteen hundred dollars ($1500), is required to be paid, and an additional surety bond, in the penal sum of ten thousand dollars ($10,000) must be posted.

But the section further provides that not fewer than ten (10), or more than one hundred (100), 'Port of Entry Permits' shall be granted by the commission. And, as appears from affidavit,—a fact which counsel will not deny,—only thirteen (13) such 'Port of Entry Permits' had been issued on the date the Michigan regulation,

designating Indiana, and other States, as discriminatory, was promulgated December 14, 1937.

It is highly significant, we apprehend, that Indiana's 'Port of Entry Permits' are granted exclusively to its own domestic wholesaler-licensees, limited in number, and not to 'out-state' manufacturers or wholesalers, thereby encouraging, if not expressly creating, a 'closed corporation' with all of the privileges of a monopoly which may control importation of beer into that State; and that, under such a legislative scheme, the Michigan manufacturer of beer possesses no rights. In operation, therefore, the Indiana law effectually bars from that State, in such quantities as the domestic port of entry licensees may choose, any, or all, beer manufactured within a sister State. Such a law, we respectfully submit, does not operate to channelize beer coming into the State of Indiana, for the purpose of protecting or guarding the health, safety, or morals of its people, but has the ulterior economic motive of conferring upon the domestic manufacturer a special privilege.

The Indiana statute, then, is an economic sword, and not a shield.

Appellant's counsel are correct in stating that it has been the traditional attitude of this Court to set its face resolutely against 'economic barriers and trade wars between the States,' (citations, pp. 16, 17, appellant's brief) and in assuming there is no question that an interference with the interstate shipment of beer, in the manner provided in the challenged act and regulation was originally prohibited by the commerce clause of the Constitution (see, cases cited pp. 20, 21, appellant's brief).

But it would be strange doctrine, indeed, which might give to Indiana an exclusive dispensation, under the 21st Amendment, § 2, to encourage within its borders a domestic liquor monopoly possessing unrestrained power, to be exerted at the will or caprice of a favored few 'Port-of-Entry-Licensees,' to bar Michigan beer products, and which, once exercised by Indiana, would deny to Michigan a kindred dispensation under the same constitutional authority, to equalize such economic advantages by shielding her domestic beer industry from Indiana's attack.

For what plaintiff really seeks in *a court of equity*, is the right of unrestricted competition within the State of Michigan, while at the same time enjoying, with others, the benefit of discriminatory legislation at home.

Appellant's argument,—that the challenged Michigan legislation nullifies the 21st Amendment, requires no categorical reply, but breaks down under weight of the foregoing considerations.

VI

CONCLUSIONS, AND RELIEF SOUGHT

We respectfully submit that the decree of the lower court should be affirmed:

First: Because plaintiff, 'standing on the threshold,' is not a person within the jurisdiction of the State of Michigan, and may not invoke the 'equal protection clause' of the 14th Amendment.

Second: Because, since adoption of the 21st Amendment, the 'equal protection clause' does not operate upon the liquor laws of a State.

Third: Because, Section 40 of the Michigan Liquor Control Act, as amended, is a valid exercise of State police power, to equalize economic advantages enjoyed by other States under dispensation of the 21st Amendment.

Fourth: Because, under the 21st Amendment, such legislation imposes no unconstitutional burden on interstate commerce.

Fifth: Because no State of the Union may successfully claim a monopoly upon the dispensation granted by the 21st Amendment or, having exercised the sovereign powers restored thereby, deny them to others.

Respectfully submitted,

RAYMOND W. STARR,
ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,
FOR APPELLEE.

EDMUND E. SHEPHERD,
ASSISTANT ATTORNEY GENERAL,
OF COUNSEL, ON THE BRIEF.

GEORGE H. HEIDEMAN,
ASSISTANT ATTORNEY GENERAL,
OF COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 130.—October Term, 1938.

Indianapolis Brewing Company, Inc., vs. The Liquor Control Commission of the State of Michigan, et al.	Appeal from the District Court of the United States for the Eastern District of Michigan.

[January 3, 1939.]

Mr. Justice Brandeis delivered the opinion of the Court.

Indianapolis Brewing Company, Inc., an Indiana corporation, manufactures beer in that State. Under appropriate licenses it has for some years sold and shipped to dealers in Michigan its product in interstate commerce. In July, 1937, the Michigan Liquor Control Act was amended so as to prohibit Michigan dealers in beer from selling any beer manufactured in a state which by its laws discriminates against Michigan beer. By Section 40 of the amended Act, the Michigan Commission is directed to declare what states discriminate as that term is defined by the Act.[1] It named ten states.[2] Among these is Indiana, which by its Liquor Control Act

[1] Amended sec. 40 of Michigan Act No. 281. Public Acts of 1937, p. 509, provides: ". . . The commission shall forthwith adopt a regulation designating the states, the laws, or the rules or regulations of which are found to require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; or which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; . . . the regulation adopted shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state therein designated, said regulation to become effective ninety days after its adoption. Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the commission has acted illegally or in excess of authority in making its finding with respect to any state."

[2] The regulation of the Liquor Control Commission issued December 14, 1937, is as follows: Pursuant to Act No. 8, Public Acts, Extra session of the year 1933 of the State of Michigan, as amended by Act No. 241 of the Public Acts for the year 1935, and Act No. 281 of the Public Act for the year 1937, particularly Section 40 thereof, the Michigan Liquor Control Commission promulgates the following rule and regulation designating as discriminatory according to Section 40 of said Act the following States: Maine, Maryland, Nevada, Indiana, New Hampshire, North Carolina, Pennsylvania, Tennessee, Vermont, Washington. These designations are made after a careful examination of the laws and rules and regulations of the aforementioned states.

of 1935, as amended in 1937, prohibits licensed Indiana wholesaler from importing any beer which is not their absolute property; and requires that in order to secure the privilege of importing beer from other states each must obtain a "port of entry" permit, of which no fewer than ten and no more than one hundred are to be granted, pay a license fee of $1500 and give a bond of $10,000, in addition to the license fee and bond required of those who sell only Indiana beer.[3].

The Indianapolis Company, suing on behalf of itself and others similarly situated, brought, in the federal court for eastern Michigan, this suit to enjoin the enforcement of that provision of the Michigan law on the ground that it violates the Federal Constitution. The members of the Michigan Liquor Control Commission and other officers of the State were made defendants. As a temporary, as well as a permanent, injunction was sought, a three-judge court was convened to hear the application for a temporary injunction. Defendants moved to dismiss the bill. It was conceded that if the law was unconstitutional the plaintiff was entitled to equitable relief. No question except that of the constitutionality of the law was presented. The court held the law valid; denied the temporary injunction; and dismissed the bill. 21 Fed. Supp. 969.

The plaintiff contends that although the Twenty-first Amendment declares:

"The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

the Michigan law should be held void as violating the commerce clause and the due process and equal protection clauses of the Fourteenth Amendment. It characterizes the law as "retaliatory"; argues, among other things, that the Amendment may not be interpreted as permitting retaliation; and insists that such interpretation would defeat its purpose, as thereby Michigan would be allowed to punish Indiana for doing what, under the rule applied in *State Board of Equalization* v. *Young's Market Co.*, 299 U. S. 59, 63, is permitted. Whether the Michigan law should more properly be described as a protective measure, we have occasion to consider. For whatever its character, the law is valid

[3] Indiana Alcoholic Beverage Act of 1935, c. 226, amended by Act of 1937, c. 197, secs. 9, 40(a), 41, Burns Revised Statutes 1933, Supp., Secs. 12-501, 12-801, 12-901.

Since the Twenty-first Amendment, as held in the *Young* case, the right of a state to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause; and, as held by that case and *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401, discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, is not prohibited by the equal protection clause. The further claim that the law violates the due process clause is also unfounded. The substantive power of the State to prevent the sale of intoxicating liquor is undoubted. *Mugler* v. *Kansas*, 123 U. S. 623.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.